



GENERAL TERMS AND CONDITIONS FOR SUPPLIERS

1. Applicability.

(a) These General Terms and Conditions for Suppliers (together with any other terms incorporated by reference pursuant to **Section 30**, these "**Terms**") are the only terms which govern the purchase of the goods ("**Goods**") and services ("**Services**") by Converge Direct, LLC ("**Buyer**") from the seller named on the Purchase Order ("**Seller**") and together with Buyer, the "**Parties**" and each, a "**Party**"). Notwithstanding anything herein to the contrary, if a written contract or statement of work signed by both Parties is in existence covering the sale of the Goods or Services covered hereby, the terms and conditions of said contract shall prevail solely as to such Goods or Services to the extent they are inconsistent with these Terms (a "**Definitive Agreement**"). Unless otherwise specifically provided in the Purchase Order or Definitive Agreement, capitalized terms used in a Purchase Order or Definitive Agreement but not defined therein shall have the meaning set forth in these Terms.

(b) The accompanying purchase or insertion order (the "**Purchase Order**") or Definitive Agreement, if any, and these Terms (including any other terms and conditions incorporated by reference herein) (collectively, this "**Agreement**") comprise the entire agreement between the Parties, and supersedes all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. These Terms prevail over any of Seller's general terms and conditions regardless of whether or when Seller has submitted its sales confirmation or such terms. This Agreement expressly limits Seller's acceptance to the terms of this Agreement. Fulfillment of or other performance under this Purchase Order or Definitive Agreement constitutes acceptance of these Terms.

2. Delivery of Goods and Performance of Services.

(a) Seller shall deliver the Goods in the quantities and on the date(s) specified in this Agreement (the "**Delivery Date**"). If Seller fails to deliver the Goods in full on the Delivery Date, Buyer may terminate this Agreement immediately by providing written notice to Seller and Seller shall indemnify Buyer against any losses, claims, damages, and reasonable costs and expenses directly attributable to Seller's failure to deliver the Goods on the Delivery Date. Buyer has the right to return any Goods delivered prior to the Delivery Date at Seller's expense and Seller shall redeliver such Goods on the Delivery Date.

(b) Seller shall deliver all Goods to the address specified in this Agreement (the "**Delivery Point**") during Buyer's normal business hours or as otherwise instructed by Buyer. Seller shall pack all goods for shipment according to Buyer's instructions or, if there are no instructions, in a manner sufficient to ensure that the Goods are delivered in undamaged condition. Seller must provide Buyer prior written notice if it requires Buyer to return any packaging material. Any return of such packaging material shall be made at Seller's risk of loss and expense.

(c) Seller shall provide the Services to Buyer as described and in accordance with the dates or schedule set forth in this Agreement.

(d) Seller acknowledges that time is of the essence with respect to Seller's obligations under this Agreement and the timely delivery of the Goods and Services, including all performance dates, timetables, project milestones and other requirements in this Agreement.

3. **Quantity.** If Seller delivers more or less than the quantity of Goods ordered, Buyer may reject all or any excess Goods. Any such rejected Goods shall be returned to Seller at Seller's sole risk and expense. If Buyer does not reject the Goods and instead accepts the

delivery of Goods at the increased or reduced quantity, the Price for the Goods shall be adjusted on a pro-rata basis.

4. **Shipping Terms.** Delivery shall be made F.O.B. (as defined in the New York Uniform Commercial Code) Delivery Point. The Purchase Order number, if any, must appear on all shipping documents, shipping labels, invoices, correspondence and any other documents pertaining to the Purchase Order, if any.

5. **Title and Risk of Loss.** Title and risk of loss passes to Buyer upon delivery of the Goods at the Delivery Point.

6. **Inspection and Rejection of Nonconforming Goods.** Buyer has the right to inspect the Goods on or after the Delivery Date. Buyer, at its sole option, may inspect all or a sample of the Goods, and may reject all or any portion of the Goods if it determines the Goods are nonconforming or defective. If Buyer rejects any portion of the Goods, Buyer has the right, effective upon written notice to Seller, to: (a) rescind this Agreement as to the Goods; (b) accept the Goods at a reasonably reduced price; or (c) reject the Goods and require replacement of the rejected Goods. If Buyer requires replacement of the Goods, Seller shall, at its expense, promptly replace the nonconforming or defective Goods and pay for all related expenses, including, but not limited to, transportation charges for the return of the defective goods and the delivery of replacement Goods. If Seller fails to timely deliver replacement Goods, Buyer may replace them with goods from a third party and charge Seller the cost thereof and terminate this Agreement for cause pursuant to **Section 16**. Any inspection or other action by Buyer under this **Section 6** shall not reduce or otherwise affect Seller's obligations under this Agreement, and Buyer shall have the right to conduct further inspections after Seller has carried out its remedial actions.

7. **Price.** The price of the Goods and Services is the price stated in the Purchase Order or Definitive Agreement, as applicable (the "**Price**"). The calculation of Price for Lead Generation Services (as defined in the Lead Generation Terms (as defined below)) shall be made in accordance with the Lead Generation Terms. If no Price is included in the Purchase Order or Definitive Agreement, the Price shall be the price set out in Seller's published price list in force as of the date of the Purchase Order or if no Purchase Order, the Definitive Agreement. Unless otherwise specified in the Purchase Order or Definitive Agreement, the Price includes all packaging, transportation costs to the Delivery Point, insurance, customs duties, and fees and applicable taxes, including, but not limited to, all sales, use or excise taxes. No increase in the Price is effective, whether due to increased material, labor or transportation costs or otherwise, without the prior written consent of Buyer.

8. **Payment Terms.** Seller shall issue an invoice to Buyer on or any time after the completion of delivery and acceptance. Buyer shall pay all properly invoiced amounts due to Seller within sixty (60) days after Buyer's receipt of such invoice, except for any amounts disputed by Buyer in good faith. All payments hereunder must be in US dollars and made by ACH or wire transfer. Without prejudice to any other right or remedy it may have, Buyer reserves the right to set off at any time any amount owing to it by Seller against any amount payable by Buyer to Seller. The foregoing provisions of this Section 8 notwithstanding, no amounts payable under this Agreement by Buyer shall be earned by Seller for any period in which Seller is in material breach of this Agreement.

9. **Seller's Obligations Regarding Services.** Seller shall:

(a) before the date on which the Services are to start, obtain, and at all times during the term of this Agreement, maintain, all

necessary licenses and consents and comply with all relevant laws applicable to the provision of the Services;

(b) comply with all rules, regulations and policies of Buyer, including security procedures concerning systems and data and remote access thereto, building security procedures, including the restriction of access by Buyer to certain areas of its premises or systems for security reasons, and general health and safety practices and procedures;

(c) maintain complete and accurate records relating to the provision of the Services under this Agreement, including records of the time spent and materials used by Seller in providing the Services in such form as Buyer shall approve and, during the term of this Agreement and for a period of two years thereafter, upon Buyer's written request, Seller shall allow Buyer to inspect and make copies of such records and interview Seller personnel in connection with the provision of the Services;

(d) obtain Buyer's written consent, which may be given or withheld in Buyer's sole discretion, prior to entering into agreements with or otherwise engaging any person or entity, including all subcontractors and affiliates of Seller, other than Seller's employees, to provide any Services to Buyer (each such approved subcontractor or other third party, a "**Permitted Subcontractor**"). Buyer's approval shall not relieve Seller of its obligations under this Agreement, and Seller shall remain fully responsible for the performance of each such Permitted Subcontractor and its employees and for their compliance with all of the terms and conditions of this Agreement as if they were Seller's own employees. Nothing contained in this Agreement shall create any contractual relationship between Buyer and any Seller subcontractor or supplier;

(e) require each Permitted Subcontractor to be bound in writing by the confidentiality provisions of this Agreement, and, upon Buyer's written request, to enter into a non-disclosure or intellectual property assignment or license agreement in a form that is reasonably satisfactory to Buyer;

(f) ensure that all persons, whether employees, agents, subcontractors, or anyone acting for or on behalf of the Seller, are properly licensed, certified or accredited as required by applicable law and are suitably skilled, experienced and qualified to perform the Services;

(g) ensure that all of its equipment used in the provision of the Services is in good working order and suitable for the purposes for which it is used, and conforms to all relevant legal standards and standards specified by the Buyer; and

(h) keep and maintain any Buyer equipment in its possession in good working order and shall not dispose of or use such equipment other than in accordance with the Buyer's written instructions or authorization.

10. **Change Orders.** Buyer may at any time, by written instructions issued to Seller (each a "**Change Order**"), order changes to the Services. Seller shall within three days of receipt of a Change Order submit to Buyer a firm cost proposal for the Change Order. If Buyer accepts such cost proposal, Seller shall proceed with the changed services subject to the cost proposal and the terms and conditions of this Agreement. Seller acknowledges that a Change Order may or may not entitle Seller to an adjustment in the Seller's compensation or the performance deadlines under this Agreement.

11. **Representations, Warranties and Additional Covenants.** Seller hereby represents, warrants, and covenants, as of the date of this Agreement and as of the delivery of any Goods or Services hereunder, that:

(a) for a period of 12 months from the Delivery Date, all Goods will:

(i) be free from any defects in workmanship, material and design;

(ii) conform to applicable specifications specified by Buyer;

(iii) be fit for their intended purpose and operate as intended;

(iv) be merchantable;

(v) be free and clear of all liens, security interests or other encumbrances; and

(vi) not infringe or misappropriate any third party's patent or other intellectual property rights.

These representations, warranties and covenants survive any delivery, inspection, acceptance or payment of or for the Goods by Buyer;

(b) Seller (i) shall perform the Services using personnel of required skill, experience and qualifications and in a professional and workmanlike manner in accordance with best industry standards for similar services and shall devote adequate resources to meet its obligations under this Agreement; (ii) the Services and Deliverables (as defined below) will be in conformity in all respects with all requirements or specifications stated in this Agreement and (ii) Buyer will receive good and valid title to all Deliverables, free and clear of all encumbrances and liens of any kind;

(c) (i) Seller has the full and proper right, power, and authority to enter into this Agreement and to grant the rights and licenses granted and to perform the acts required of it by this Agreement; (ii) Seller is duly organized, validly existing and in good standing as a corporation or other entity as represented herein under the laws and regulations of its jurisdiction of incorporation, organization, or chartering; (iii) the execution of this Agreement has been duly authorized by all necessary corporate action of the Seller; (iv) this Agreement constitutes the legal, valid, and binding obligation of Seller, enforceable against Seller in accordance with its terms; (v) the execution of this Agreement and the performance by such Seller of its obligations and duties under this Agreement, do not and will not violate, conflict with, result in a breach of, or constitute a default under (A) any agreement to which such Seller is a party or by which it is otherwise bound, (B) any applicable law, or (C) any third party's Intellectual Property Rights (as defined below); and (vi) Seller has not and will not violate any provision of any law now or hereafter in effect;

(c) Seller is required to seek and receive preapproval from Buyer of any marketing or advertising materials used in connection with the Goods or Services and all such materials must comply with any brand advertisement rules provided by Buyer and that if Seller cannot comply with such rules, Buyer shall have the right to rescind and cancel this Agreement without liability. If Seller performs any Services or delivers any Goods in violation of such rules, then in addition to any other remedies available to Buyer under this Agreement or at law or equity, Buyer shall have the right to require reperformance of such Services or re-delivery of conforming Goods or a refund for the Price of the Services or Goods; and

(d) Seller shall not use any controversial marketing techniques, including unsolicited e-mails, use of incentives, newsgroup postings, or chat room discussions and that upon Buyer's request, Seller shall promptly provide copies of any marketing materials and content used to perform the Services or in connection with the Goods within the last five (5) years.

The warranties, representations and covenants set forth in this **Section 11** are cumulative and in addition to any other warranty provided by law or equity. Any applicable statute of limitations runs from the date of Buyer's discovery of the noncompliance of the Goods or Services with the foregoing warranties. If Buyer gives Seller notice of noncompliance pursuant to this **Section 11**, Seller shall, at its own cost and expense, at Buyer's option, either promptly (i) replace or repair the defective or nonconforming Goods and pay for all related expenses, including, but not limited to, transportation charges for the return of the defective or nonconforming goods to Seller and the delivery of repaired or replacement Goods to Buyer or correct or re-perform the applicable Services, or (ii) refund any related amounts paid by Buyer, and, if applicable.

12. **Indemnification.**

(a) **General Indemnification.** Seller shall defend, indemnify and hold harmless Buyer and its subsidiaries and affiliates and its

and their respective successors or assigns and its and their respective directors, officers, shareholders and employees (collectively, "Indemnitees") from and against any and all loss, injury, death, damage, liability, claim, deficiency, action, judgment, interest, award, penalty, fine, cost or expense, including reasonable attorney and professional fees and costs, and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers (collectively, "Losses") arising out of or occurring in connection with (i) the Goods and Services purchased from Seller, (ii) any contaminated file, virus, worm, or Trojan horse originating from Seller or its agents, vendors or subcontractors; or (iii) Seller's (x) negligence, willful or more culpable acts or omissions, (y) breach or violation of law, or (z) breach of any representation, warranty or covenant contained in this Agreement.

(b) **Intellectual Property Indemnification.** Seller shall defend, indemnify, and hold harmless the Indemnitees from and against any and all Losses based on a claim that any of the Services, Deliverables, or Goods or Buyer's receipt or use thereof infringes any Intellectual Property Right of a third party; provided, however, that Seller shall have no obligations under this **Section 12(b)** with respect to claims to the extent arising out of any Buyer Materials (as defined below).

(c) **Indemnification Procedures.** An Indemnitee seeking indemnification under this Agreement shall give Seller: (a) prompt notice of the relevant Loss; provided, however, that failure to provide such notice shall not relieve the Seller from its indemnification liability or obligation under this Agreement, except to the extent of any material prejudice directly resulting from such failure and (b) reasonable cooperation, at the Seller's expense, in the defense of such claim. The Seller shall have the right to control the defense; provided, however, that Seller shall not, without the prior written consent of the Indemnitee, settle, or dispose of any claims, such consent not to be unreasonably withheld. Each Indemnitee shall have the right to participate in the defense at its own expense.

(d) **Limitation of Liability.** IN NO EVENT SHALL BUYER BE LIABLE TO SELLER OR ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT OR LOSS OF DATA OR DIMINUTION IN VALUE, OR FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE. IN NO EVENT SHALL BUYER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO SELLER FOR THE RELATED ADVERTISING SERVICES SOLD HEREUNDER.

13. Intellectual Property.

(a) **Ownership of Deliverables.** Except as set forth in **Section 13(c)**, Buyer is, and shall be, the sole and exclusive owner of all right, title, and interest in and to the Deliverables and Goods, including all Intellectual Property Rights therein. Seller agrees that with respect to any Deliverables that may qualify as "work made for hire" as defined in 17 U.S.C. § 101, such Deliverables are hereby deemed a "work made for hire" for Buyer. To the extent that any of the Deliverables do not constitute a "work made for hire", Seller hereby irrevocably assigns to Buyer without additional consideration, all right, title, and interest throughout the world in and to the Deliverables, including all Intellectual Property Rights therein. Seller shall cause the Seller's personnel to irrevocably waive, to the extent permitted by applicable Law, any and all claims such personnel may now or hereafter have in any jurisdiction to so-called "moral rights" or rights of droit moral with respect to the Deliverables.

(b) **Cooperation.** Upon Buyer's reasonable request, Seller shall promptly take such further actions, including execution and delivery of all appropriate instruments of conveyance, as may be necessary to assist Buyer to prosecute, register, perfect, or record its rights in or to any Deliverables or Goods.

(c) **Pre-Existing Materials.** Seller and its licensors are, and shall remain, the sole and exclusive owners of all right, title, and interest in and to the Pre-Existing Materials (as defined below), including all Intellectual Property Rights therein. Seller hereby grants Buyer a limited, irrevocable, perpetual, fully paid-up, royalty-free, non-transferable (except in accordance with **Section 21**), non-sublicenseable, worldwide license to use, perform, display, execute, reproduce, distribute, transmit, modify (including to create derivative works), import, make, have made, sell, offer to sell, and otherwise exploit any Pre-Existing Materials to the extent incorporated in, combined with or otherwise necessary for the use of the Deliverables and Goods for any and all purposes. All other rights in and to the Pre-Existing Materials are expressly reserved by Seller.

(d) **Buyer Materials.** Buyer and its clients and licensors are, and shall remain, the sole and exclusive owner of all right, title, and interest in and to the Buyer Materials (as defined below), including all Intellectual Property Rights therein. Seller shall have no right or license to use any Buyer Materials except solely during the term of this Agreement to the extent necessary to provide the Services or deliver the Goods to Buyer. All other rights in and to the Buyer Materials are expressly reserved by Buyer.

(e) For purposes of this Agreement, "**Deliverables**" means all documents, work product, materials and deliverables that are delivered to Buyer under this Agreement or prepared by or on behalf of Seller in the course of performing the Services, including Leads, Impressions, Link-Outs or Impressions (each as defined in the Advertising Terms) and any items identified as such in a Purchase Order or Definitive Agreement.

(f) For purposes of this Agreement, "**Intellectual Property Rights**" means all (a) patents, patent disclosures, and inventions (whether patentable or not), (b) trademarks, service marks, trade dress, trade names, logos, corporate names, and domain names, together with all of the goodwill associated therewith, (c) copyrights and copyrightable works (including computer programs), and rights in data and databases, (d) trade secrets, know-how, and other confidential information, and (e) all other intellectual property rights, in each case whether registered or unregistered and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world.

(g) For purposes of this Agreement, "**Pre-Existing Materials**" means the pre-existing materials specified in the Purchase Order or Definitive Agreement and all documents, data, know-how, methodologies, software, and other materials, including computer programs, reports, and specifications, provided by or used by Seller in connection with performing the Services, in each case developed or acquired by the Seller prior to the commencement or independently of this Agreement.

(h) For purposes of this Agreement, "**Buyer Materials**" Confidential Information, documents, data, know-how, ads, content, copy, creative, methodologies, software, and other materials provided to Seller by Buyer, including computer programs, strategies, reports, and specifications.

14. **Insurance.** During the term of this Agreement and for a period of one year thereafter, Seller shall, at its own expense, maintain and carry insurance in full force and effect which includes, but is not limited to, commercial general liability (including product liability) in a sum no less than \$5,000,000 and Cyber Liability in a sum no less than \$5,000,000, with financially sound and reputable insurers. Upon Buyer's request, Seller shall provide Buyer with a certificate of insurance from Seller's insurer evidencing the insurance coverage specified in these Terms. The certificate of insurance shall name Buyer as an additional insured. Seller shall provide Buyer with 2 days' advance written notice in the event of a cancellation or material change in Seller's insurance policy. Except where prohibited by law, Seller shall require its insurer to waive all rights of subrogation against Buyer's insurers and Buyer.

15. **Compliance with Law.** Seller shall comply with all applicable laws, regulations and ordinances. Seller shall maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under this Agreement. Seller shall comply with all export and import laws of all countries involved in the sale of the Goods or Services under this Agreement or any resale of the Goods by Seller. Seller assumes all responsibility for shipments of Goods requiring any government import clearance. Buyer may terminate this Agreement if

any governmental authority imposes antidumping or countervailing duties or any other penalties on Goods.

16. **Termination.** In addition to any remedies that may be provided under these Terms, Buyer may terminate this Agreement with immediate effect upon written notice to the Seller, either before or after the acceptance of the Goods or the seller's delivery of the Services, if Seller has not performed or complied with any of these Terms, in whole or in part. If the Seller becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors, then the Buyer may terminate this Agreement immediately upon written notice to Seller. Buyer may also terminate this Agreement in whole or in part for its convenience upon at least fifteen (15) days written notice. If Buyer terminates this Agreement for any reason, Seller's sole and exclusive remedy is payment for the Goods or Services delivered and accepted by Buyer prior to the termination.

17. **Waiver.** No waiver by Buyer of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by Buyer. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement operates, or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

18. **Confidential Information.** All non-public, confidential or proprietary information of Buyer ("**Confidential Information**"), including but not limited to, specifications, samples, patterns, designs, plans, drawings, documents, advertising channel or campaign strategies, data, business operations, customer lists, consumer information, personally identifiable information, consumer interest, pricing, discounts or rebates, disclosed by Buyer to Seller, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential" in connection with this Agreement is confidential, solely for the purpose of performing this Agreement and may not be disclosed or copied unless authorized in advance by Buyer in writing. Upon Buyer's request, Seller shall promptly return all documents and other materials received from Buyer. Buyer shall be entitled to injunctive relief for any violation of this **Section 18**. Seller will not issue any written or oral announcement, press release, or other public release of information that contains information about this Agreement or Buyer without the prior written consent of Buyer.

19. **Non-Solicitation of Vendors, Clients, Employees, and Independent Contractors.**

(a) **Employees and Independent Contractors.** During the term of these Terms and for a period of two (2) years following the expiration or termination of this Agreement for any reason (the "**Restricted Period**"), Seller shall not directly or indirectly, hire or solicit any employee or independent contractor of Buyer or encourage any such employee or independent contractor to leave such employment or engagement, respectively, or hire or engage any such employee or independent contractor, except, in the case of employees, pursuant to a general solicitation which is not directed specifically to any such employees.

(b) **Suppliers and Clients.** During the Restricted Period, Seller shall not directly or indirectly, solicit or entice, or attempt to solicit or entice, any suppliers or clients of Buyer or potential clients of Buyer for purposes of diverting their business or services from Buyer. The Parties hereby agree that Losses arising out of or relating to any breach of this **Section 19(b)** by Seller shall include 100% of Buyer's anticipated loss of revenues.

(c) **Equitable Remedies.** Seller acknowledges that a breach or threatened breach of this **Section 19** would give rise to irreparable harm to the Buyer, for which monetary damages would not be an adequate remedy, and hereby agrees that in the event of a breach or a threatened breach by Seller of any such obligations, Buyer shall, in addition to any and all other rights and remedies that may be available to it in respect of such breach, be entitled to equitable relief, including a temporary restraining order, an injunction, specific performance and any other relief that may be available from a court of competent jurisdiction (without any requirement to post bond).

(d) **Reformation.** Seller acknowledges that the restrictions contained in this **Section 19** are reasonable and necessary to protect the legitimate interests of Buyer and constitute a material inducement to Buyer to enter into this Agreement and consummate the transactions contemplated by this Agreement. In the event that any covenant contained in this **Section 19** should ever be adjudicated to exceed the time, geographic, product or service, or other limitations permitted by applicable law in any jurisdiction, then any court is expressly empowered to reform such covenant, and such covenant shall be deemed reformed, in such jurisdiction to the maximum time, geographic, product or service, or other limitations permitted by applicable law. The covenants contained in this **Section 19** and each provision hereof are severable and distinct covenants and provisions. The invalidity or unenforceability of any such covenant or provision as written shall not invalidate or render unenforceable the remaining covenants or provisions hereof, and any such invalidity or unenforceability in any jurisdiction shall not invalidate or render unenforceable such covenant or provision in any other jurisdiction.

20. **Force Majeure.** No Party shall be liable or responsible to the other Party, or be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement, when and to the extent such Party's (the "**Impacted Party**") failure or delay is caused by or results from the following force majeure events ("**Force Majeure Event(s)**"): (a) acts of God; (b) flood, fire, earthquake, pandemic, epidemic, or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order, law, or action; (e) embargoes or blockades in effect on or after the date of this Agreement; (f) national or regional emergency; (g) strikes, labor stoppages or slowdowns or other industrial disturbances; (h) telecommunication breakdowns, power outages or shortages, lack of warehouse or storage space, inadequate transportation services, or inability or delay in obtaining supplies of adequate or suitable materials; and (i) other similar events beyond the reasonable control of the Impacted Party. The Impacted Party shall give notice within five days of the Force Majeure Event to the other Party, stating the period of time the occurrence is expected to continue. The Impacted Party shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized. The Impacted Party shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause. In the event that the Impacted Party's failure or delay remains uncured for a period of thirty (30) days following written notice given by it under this **Section 20**, the other Party may thereafter terminate this Agreement upon five days' written notice.

21. **Assignment.** Seller shall not assign, transfer, delegate or subcontract any of its rights or obligations under this Agreement without the prior written consent of Buyer. Any purported assignment or delegation in violation of this **Section 21** shall be null and void. No assignment or delegation shall relieve the Seller of any of its obligations hereunder. Buyer may at any time assign or transfer any or all of its rights or obligations under this Agreement without Seller's prior written consent to any affiliate or to any person acquiring all or substantially all of Buyer's assets.

22. **Relationship of the Parties.** The relationship between the Parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the Parties, and neither Party shall have authority to contract for or bind the other Party in any manner whatsoever.

23. **No Third-Party Beneficiaries.** This Agreement is for the sole benefit of the Parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

24. **Governing Law.** All matters arising out of or relating to this Agreement are governed by and construed in accordance with the internal laws of the State of New York without giving effect to any choice or conflict of law provision or rule (whether of the State of New York or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of New York. The Convention on the International Sale of Goods shall not apply to this Agreement.

25. **Submission to Jurisdiction.** Any legal suit, action or proceeding arising out of or relating to this Agreement shall be instituted in the federal courts of the United States of America or the courts of the State of New York in each case located in the City of New York and County of New York, and each Party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding.

26. **Notices.** All notices, requests, consents, claims, demands, waivers and other communications hereunder (each, a "Notice") shall be in writing and addressed to the Parties at the addresses set forth on the face of the Purchase Order or to such other address that may be designated by the receiving Party in writing and, in the case of Buyer, with a copy to the General Counsel at Converge Direct, LLC, 25 West 29th Street, New York, NY 10018 or by email at contracts@convergedirect.com. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only (a) upon receipt of the receiving Party, and (b) if the Party giving the Notice has complied with the requirements of this **Section 26**.

27. **Severability.** If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

28. **Survival.** Provisions of this Agreement which by their nature should apply beyond their terms will remain in force after any termination or expiration of this Agreement including **Sections 1, 2(d), 4, 5, 9, 11 through 13, 15 through 19, and 21 through 33** and all provisions of the Lead Generation Terms.

29. **Amendment and Modification.** These Terms which can be found at www.convergemarketing.com/compliance/supplier and any other terms, conditions, agreements or other documents incorporated by reference in this Agreement which refer to a Buyer website are subject to change and are effective upon Buyer posting an updated version to such websites.

30. **Additional Applicable Terms.**

(a) **Advertising Services.** If the Services include any Advertising Services (as defined in the Advertising Terms), the terms and conditions set forth in the Advertising Services Additional Terms and Conditions for Suppliers located at www.convergemarketing.com/compliance/supplier ("**Advertising Terms**") shall also apply and be deemed incorporated into these Terms and this Agreement by reference.

(b) **Data Access, Storage or Processing.** If in connection with the Services, Seller will Process (as defined in the DPA (as defined below)) any Personal Information (as defined in the DPA) or Confidential Information (as defined in the DPA), the additional terms and conditions set forth in Supplier Data Processing Agreement located at www.convergemarketing.com/compliance/supplier (the "**DPA**") shall also apply and be deemed incorporated into these Terms by reference.

31. **Records; Audit.** During the term of this Agreement and for a period of one (1) year after the end thereof, Seller shall provide to Buyer all relevant data required to (a) calculate and verify the Prices and compensation payable to Seller and (b) any other data that will assist Buyer to optimize its marketing strategies and media buying. Seller shall all times ensure that the data is accurate and complete and is provided within the timeframes required by Buyer. Buyer has the right to inspect and audit the underlying data, databases, systems, platforms and sources that were used to compile the aggregated data supplied to Buyer by Seller. Buyer has the right to require Seller to tender credit memos to reflect changes resulting from the data that is supplied by Seller to Buyer.

32. **Order of Precedence.** In the event of a conflict or inconsistency between the documents or provisions incorporated into or referenced in these Terms, the documents or provisions shall prevail in the order listed below, with the first document or provision listed having the highest precedence:

- (a) the DPA, if applicable
- (b) a Definitive Agreement, if any
- (c) the Lead Generation Terms, if applicable
- (d) these Terms
- (e) the Purchase Order, if any

33. **Other Definitional Provisions.** The following shall apply to this Agreement.

(a) The words "hereof," "herein", and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement, and Section references are to these Terms unless otherwise specified.

(b) All other terms, agreements, schedules, and exhibits referred to herein are hereby incorporated in and made a part of this Agreement as if set forth in full herein.

(c) The meanings given to terms defined herein shall be equally applicable to both singular and plural forms of such terms.

(d) Whenever the words "include," "includes", or "including" are used in this Agreement they shall be deemed to be followed by the words "without limitation." Where the context permits, the use of the term "or" will be equivalent to the use of the term "and/or."

(e) Words denoting any gender shall include all genders. Where a word or phrase is defined herein, each of its other grammatical forms shall have a corresponding meaning.

(f) A reference to any Party shall include such Party's successors and permitted assigns.

(g) The word "extent" in the phrase "to the extent" means the degree to which a subject or other thing extends, and such phrase does not mean simply "if".

(h) References herein to any law shall be deemed to refer to such law as amended, modified, codified, reenacted, replaced, supplemented, or superseded in whole or in part and in effect from time to time, including any successor legislation thereto, and also to all rules and regulations promulgated thereunder.

(i) The division into Sections and other subdivisions and the insertion of headings are for convenience of reference only and shall not affect or be utilized in construing or interpreting this Agreement.

(j) References to "days" means calendar days unless otherwise expressly specified. When calculating the period of time before which, within which, or following which any act is to be done or step taken pursuant to this Agreement, the date that is the reference date in calculating such period will be excluded.

(k) References to "written" or "in writing" include in electronic form (including by e-mail transmission or electronic communication by portable document format (.pdf)).

(l) The word "will" will be construed to have the same meaning and effect as the word "shall". The words "shall," "will," or "agree(s)" are mandatory, and "may" is permissive.

END OF TERMS



**ADVERTISING SERVICES
ADDITIONAL TERMS AND CONDITIONS FOR SUPPLIERS**

1. Applicability.

(a) These Advertising Services Additional Terms and Conditions for Suppliers (these "**Advertising Terms**") provide supplemental terms and conditions relating to the purchase of Advertising Services (as defined below) through the Channels by Converge Direct, LLC ("**Buyer**") from the seller named on the Purchase Order or other document incorporating these Advertising Terms by reference ("**Seller**" and together with Buyer, the "**Parties**" and each, a "**Party**"). Notwithstanding anything herein to the contrary, if a written contract or statement of work signed by both Parties is in existence covering the sale of Advertising Services covered hereby Terms (a "**Definitive Agreement**"), such Definitive Agreement shall prevail solely as to such Advertising Services over these Advertising Terms to the extent they are inconsistent with these Advertising. Unless otherwise specifically provided in the Purchase Order or Definitive Agreement, capitalized terms used in a Purchase Order or Definitive Agreement but not defined therein shall have the meaning set forth in these Advertising Terms. Capitalized terms used in these Advertising Terms but not defined herein shall have the meaning set forth in the General Terms and Conditions for Suppliers which can be found here www.convergemarketing.com/compliance/supplier (the "**General Terms**").

(b) The Purchase Order or Definitive Agreement, if any, together with the General Terms and these Advertising Terms (collectively, this "**Agreement**") comprise the entire agreement between the Parties relating to the subject matter of this Agreement, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. These Advertising Terms prevail over any of Seller's terms and conditions regardless of whether or when Seller has submitted its sales confirmation or such terms. This Agreement expressly limits Seller's acceptance to the terms of this Agreement. Fulfillment of or other performance under this Purchase Order or Definitive Agreement constitutes acceptance of these Advertising Terms.

2. Advertising Services.

(a) **Generally.** Seller shall provide to Buyer the Advertising Services for the Price (as defined below) and in accordance with this Agreement. Seller shall provide the Advertising Services (i) using personnel of required skill, experience, and qualifications; (ii) in a timely, workmanlike, and professional manner; (iii) in accordance with the highest professional standards in Seller's field; and (iv) to the satisfaction of the Buyer.

(b) **Advertising Services.** (i) Advertising Services under this Agreement means the services that Seller has agreed to perform under this Agreement, including the generation, sourcing and delivery of Qualified Leads (as defined below), Impressions (as defined below), or Link-Outs (as defined below) for the benefit of Buyer and its Clients (as defined below) using the Content (as defined below) in the Channels (as defined below) in accordance with this Agreement (the "**Advertising Services**"). Seller agrees to use best efforts to generate Qualified Leads, Impressions and Link-Outs as set forth in this Agreement and Buyer agrees to pay the Price for Compensable Leads (as defined below) Impressions, and Link-Outs as set forth in this Agreement provided that Buyer shall not be obligated to purchase any Leads, Impressions, or Link-Outs in excess of any "Campaign Cap" for the duration of the Campaign period or for any given day during the Campaign period in excess of any "Daily Cap" identified in this Agreement. Leads must be submitted during the times and days specified in this Agreement.

(ii) All Leads, Impressions, Link-Outs, and Personal Information delivered under this Agreement shall be deemed to be the property of Buyer, and nothing herein shall be construed to transfer title

to, or as a retention of title to, any Leads Impressions, or Link-Outs delivered hereunder or any related Personal Information to Seller or any of its Transferors (as defined below). Seller shall not directly or indirectly market or remarket, target or retarget, transfer, or sell any Leads, Impressions, Link-Outs, or related Personal Information delivered hereunder including any Duplicate Leads (as defined below).

(c) **Acceptable Materials.** Seller is required to seek and receive preapproval from Buyer of any marketing or advertising materials or content ("**Content**") used in connection with the Advertising Services and all such materials must comply with any brand advertisement rules provided by Buyer. If Seller cannot comply with such rules, Buyer shall have the right to rescind and cancel this Agreement without liability. If Seller performs any Advertising Services in violation of such rules, then in addition to any other remedies available to Buyer under this Agreement or at law or equity, Buyer shall have the right to require reperformance of such Advertising Services or a refund for the Price of the Advertising Services. Seller agrees not to use any controversial marketing techniques, including unsolicited e-mails, use of incentives, newsgroup postings, or chat room discussions. Upon Buyer's request, Seller shall promptly provide copies of any Content used to perform the Advertising Services within the last five (5) years

(d) **Channels.** Notwithstanding Buyer's consent or approval of the engagement of any Permitted Subcontractor (as defined below), Seller is solely responsible for the development, operation, Content, advertising, and maintenance of Seller's and its Transferors' and their respective subcontractors' or agents' Channels, including any Telemarketing (as defined below) and their acts or omissions. Seller may not directly or indirectly utilize any Channels to perform the Advertising Services other than those specifically authorized for use in this Agreement.

3. Price, Delivery and Acceptance. (a) The price ("**Price**") for Advertising Services will be an amount equal to the Cost (as defined below) per Compensable Lead, Impression, or Link-Out. No increase in the Price is effective, whether due to increased material, labor, or otherwise, without the prior written consent of Buyer.

(b) The Advertising Services shall be delivered and accepted in accordance with and in the manner provided in this Agreement. Leads will be deemed delivered when received from Seller through Buyer's automatic programming interface ("**API**"). Impressions and Link-Outs shall be deemed delivered when and as (i) generated by Seller from time to time and (ii) recorded and reported on either (A) Buyer's designated site or app, or (B) if such Impressions or Link-Outs are not able to be recorded or reported in accordance with subclause (B), as verifiably and validly recorded and reported in Seller's computer systems. Acceptance of a Lead, Impression, or Link-Out occurs when Buyer notifies Seller in writing or electronically that it has accepted such Lead, Impression, or Link-Out. For the avoidance of doubt, confirmation of receipt by Buyer's API of any Lead, Impression, or Link-Out shall not constitute acceptance.

(c) Notwithstanding anything to the contrary in this Agreement including any prior acceptance or payment by Buyer, Buyer is under no obligation to accept or pay for any Lead, Impression, or Link-Out that does not meet with the definition of a Qualified Lead, Impression, or Link-Out and should Buyer ever determine that any such Lead, Impression, or Link-Out is not Qualified or otherwise comply with this Agreement, Seller shall promptly issue a refund to Buyer for any Price paid in respect of such Lead, Impression, or Link-Out.

(d) Buyer tracking shall at all times prevail in the calculation of Leads, Impressions, Link-Outs, Conversions, Prices, acceptance, and delivery and whether a Lead, Impression, or Link-Out is Qualified or Compensable.

have obtained the Leads, Impressions, and Link-Outs using only the Content and Channels specified in this Agreement;

(g) Seller has not, and, to Seller's Knowledge, its Transferors have not, offered any incentive (including without limitation, any payment, rebate, discount or other benefit) to entice a consumer to become a Lead, Impression, or Link-Out;

(h) Neither Seller, nor, to Seller's Knowledge, no Transferor is subject to any material pending or, to Seller's Knowledge, threatened lawsuit, claim or investigation relating to a violation of Applicable Law (including the TSR, TCPA and CAN-SPAM Act);

(i) it did not and shall not record, intercept or wiretap any consumer calls, retain any Personal Information, or modify, manipulate, or re-route Leads, Impressions, or Link-Outs in any manner other than as approved by Seller in writing and otherwise in compliance with all Applicable Laws;

(j) in the event that Seller or any of its Transferors use Telemarketing to directly or indirectly to perform the Advertising Services, (i) all such Telemarketing will be conducted in accordance with Applicable Law, including the TSR, (ii) Seller has provided a true, correct and complete copy to Buyer of the standard operating procedures and script to be used in any call center operated directly or indirectly by Seller or its Transferees in connection with Seller's performance of this Agreement (a "Call Center") prior to initiating any such Telemarketing; (iii) that all such Telemarketing at any Call Center has been and will be conducted in accordance with such procedures and script; and (iv) all Telemarketing will be made during the times and hours permitted by Applicable Law;

(k) if Seller or Transferor's use Email (as defined below) as a Channel, Seller's and such Transferor's Email practices meet or exceed the Converge Supplier Email Guidelines, a copy of which is located at www.convergemarketing.com/compliance/supplier;

(l) If the Advertising Services include Call Transfers (as defined below) (i) each Call Transfer shall be transferred to the phone number designated in writing by Buyer during the times and days designated by Buyer in this Agreement, and (ii) Seller shall be permitted to document the existence of such Call Transfer and the telephone number of the consumer, but shall not track, collect, record, intercept, wiretap, retain or maintain a recording of any consumer call or any other Personal Information about the consumer;

(m) it shall only transfer to Buyer the Personal Information specified by Buyer in this Agreement and shall not in any case transfer any Personal Information that is considered sensitive Personal Information under Applicable Law without Buyer's express prior written consent, such as racial or ethnic identity or origin, driver's license number, passport number, religious or philosophical beliefs, social security numbers, credit card numbers, bank account numbers, date of birth, health, sex life, sexual orientation, or insurance information;

(n) it shall at its own cost and expense (i) provide to Buyer upon request sufficient evidence of all Required Consents including, screenshots and visual recordings of Required Consents, the disclaimer and consent language appearing on mediums from which Leads were collected, the IP address of the source of the Leads, and the date and time stamp indicating the time the Lead was collected; (ii) digitally store true, correct, and complete records of all Required Consents in a manner which would allow the Required Consents to be produced in connection with an investigation, claim, or litigation to prove conclusively that all Required Consents were validly given and obtained in accordance with Applicable Law; (iii) make all such records available to Buyer within forty-eight (48) hours of any such request in the format requested by Buyer and (iv) ensure storage in accordance with this **Section 5(n)** of any individual Required Consent for ninety (90) days after the longer of (i) the date that any threatened or pending investigation or claim or litigation regarding such Required Consent is closed or settled or a final non-appealable judgment is issued, as applicable, and (ii) the date of the conclusion of any applicable statute of limitations.

(o) it shall ensure that Buyer tracking methods are promptly incorporated by Seller as needed and that Buyer's tracking is active and unencumbered;

4. **Payment Terms.** Seller shall issue an invoice to Buyer any time after the completion of delivery and acceptance. Buyer shall pay all properly invoiced amounts due to Seller within sixty (60) days after Buyer's receipt of such invoice, except for any amounts disputed by Buyer in good faith. All payments hereunder to Buyer must be in US dollars and made by ACH or wire transfer. Without prejudice to any other right or remedy it may have, Buyer reserves the right to set off at any time any amount owing to it by Seller against any amount payable by Buyer to Seller. Notwithstanding anything to the contrary contained in this Agreement, no amounts payable under this Agreement by Buyer shall be earned by Seller for any period in which Seller is in material breach of this Agreement.

5. **Additional Representations, Warranties and Covenants of Seller Related to Advertising Services.** Seller hereby represents, warrants, and covenants to Buyer on the date of this Agreement and as of the time of delivery of any Lead, Impression, Link-Out or Advertising Service to Buyer:

(a) it is not in breach of this Agreement and each Lead, Impression, or Link-Out sold to Buyer by Seller is a Qualified Lead, Impression, or Link-Out and complies with the terms of this Agreement, and the sale and transfer of any Lead, Impression, Link-Out, and any related Personal Information under this Agreement will not, and does not, violate any Applicable Law or the Seller's or any applicable Transferor's privacy policy;

(b) to the extent that any Personal Information of a consumer will be transferred to Buyer or any of Buyer's Clients under this Agreement, the consumer has validly consented to the sale and transfer of its Personal Information to Buyer and Buyer's Clients under Applicable Law for the purposes contemplated by this Agreement;

(c) if Seller acquired the Lead, Impression, or Link-Out from a third party (including, for example, in circumstances where Seller acquires Leads and accompanying Personal Information from a third party and then markets or solicits such Leads using any method or medium to generate a potential Lead under this Agreement), the solicitation, acquisition or transfer of such Lead, Impression, or Link-Out and any accompanying Personal Information and all sales and transfers of such Lead, Impression, or Link-Out and accompanying Personal Information from all transferors (collectively, "**Transferors**") including, the original source of such Lead, Impression, or Link-Out did not, and do not, by virtue of the subsequent acquisitions and transfer (including the transfer contemplated by this Agreement) violate Applicable Law;

(d) it has obtained all consents required or necessary Applicable Law for Seller to perform this Agreement (collectively, "**Required Consents**") including Required Consents sufficient (i) for Buyer's identified TCPA Seller to be able to contact or send advertisements to the consumer associated with a Converted Lead by any available method including via email, phone call, fax, text, or other means of electronic communication regarding the advertising, sale, or marketing of such TCPA's Seller's goods or services identified including through the use of autodialed, prerecorded, artificial intelligence generated or automated calls (landline or wireless), faxes, or texts; (ii) for Buyer and any of its Clients to contact or send advertisements via email to the consumer associated with a Lead; and (iii) for the collection and sale of Personal Information associated with a Lead to Buyer and Buyer's Clients;

(e) to Seller's Knowledge the consumer associated with any Lead, Impression, or Link-Out has not (i) registered any phone number (landline or wireless) provided with the U.S. Federal "Do-Not-Call" registry; (ii) made a do-not-call request, email "unsubscribe" or "opt-out" request, or request to have any of its Personal Information deleted; or (iii) revoked any Required Consents;

(f) it and, to Seller's Knowledge, its Transferors have not used false, deceptive, or misleading methods to obtain Leads, Impressions, or Link-Outs and, to Seller's Knowledge, Leads, Impressions, and Link-Outs delivered hereunder are not fraudulent and have not been submitted fraudulently, and persons submitting Leads have not been coached to falsely claim they meet the requirements of a Lead or Qualified Lead and Seller and its Transferors have otherwise obtained all Leads, Impressions, or Link-Outs in accordance with Applicable Law (including the TSR (as defined below), TCPA and CAN-SPAM Act) and Seller and its Transferors

(p) (i) it has not within the last five (5) years suffered any material unauthorized acquisition of, access, disclosure, use, denial of use, alteration, corruption, destruction, deletion, compromise, impairment, intrusion to, loss, or breach of Personal Information, Confidential Information, or its computer systems, including any that (A) constitutes a breach under any Applicable Law; or (B) would trigger a notification or reporting requirement to data protection authorities or data subjects under Applicable Law (a "**Security Incident**"); and (ii) it has not notified and, to Seller's Knowledge, there have been no facts or circumstances that would require the Seller to notify, any governmental authority or other person of any Security Incident;

(q) it has at all times during the term of this Agreement implemented and maintained, and required all vendors, processors, and other third parties that Process any Personal Information for or on behalf of Seller to implement and maintain, commercially reasonable and industry standard security measures, plans, procedures, controls, and programs, including a written information security program to (i) identify and address internal and external risks to the privacy and security of Personal Information in its possession or control; (ii) implement, monitor, and improve adequate and effective administrative, technical, and physical safeguards to protect such Personal Information and the operation, integrity, and security of its software, systems, applications, and websites involved in the processing of Personal Information; and (iii) provide notification in compliance in all material respects with Applicable Laws in the case of any Security Incident;

(r) obtain Buyer's written consent, which may be given or withheld in Buyer's sole discretion, prior to entering into agreements with or otherwise engaging any person or entity, including all subcontractors and affiliates of Seller, other than Seller's employees, to provide any Services to Buyer (each such approved subcontractor or other third party, a "**Permitted Subcontractor**"). Buyer's approval shall not relieve Seller of its obligations under this Agreement, and Seller shall remain fully responsible for the performance of each such Permitted Subcontractor and its employees and for their compliance with all of the terms and conditions of this Agreement as if they were Seller's own employees. Nothing contained in this Agreement shall create any contractual relationship between Buyer and any Seller subcontractor or supplier; and

(s) require each Permitted Subcontractor to be bound in writing by the confidentiality provisions of this Agreement, and, upon Buyer's written request, to enter into a non-disclosure or intellectual property assignment or license agreement in a form that is reasonably satisfactory to Buyer.

6. **Order of Precedence.** In the event of a conflict or inconsistency between the documents or provisions incorporated into or referenced in these Advertising Terms, the documents or provisions shall prevail in the order listed below, with the first document or provision listed having the highest precedence:

- (a) the DPA, if applicable
- (b) a Definitive Agreement, if any
- (c) these Advertising Terms
- (d) the General Terms
- (e) the Purchase Order

7. **Defined Terms.** As used in these Advertising Terms, the following terms shall have the respective meanings indicated below:

"**Applicable Laws**" shall mean any and all applicable laws, rules, and regulations including, without limitation, applicable (i) advertising and marketing laws such as the Federal Trade Commission Act and the regulations, rules, guidance and principles of self-regulation issued by the Federal Trade Commission, the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (the "**CAN-SPAM Act**"), the Telemarketing Sales Rule (16 C.F.R. §3102) (the "**TSR**"), and the Telephone Consumer Protection Act (the "**TCPA**"), (ii) data security and data breach laws, (iii) wiretapping laws, (iv) laws that limit or prohibit the collection, communication, or use of consumer health data, and (v) data broker registration laws.

"**Call Transfers**" means Advertising Services which includes the transfer of a live video, telephone, mobile, or other electronic call with a consumer which is routed or transferred directly or indirectly through Seller's or any of its Transferors' systems before being routed or transferred to Buyer or Buyer's Client's systems.

"**Campaign**" means a strategic marketing initiative of Buyer designed to achieve specific goals for Buyer's Clients within a defined period and which involves coordinated efforts across various Channels and tactics to deliver a cohesive message to consumers and drive desired outcomes.

"**Channel**" means the channels used by Seller or its Transferors or their respective subcontractors or agents to advertise, disseminate information, or communicate messages to consumers including, without limitation, Digital and Offline Channels (as defined below).

"**Client**" means Buyer's clients, customers, data brokers and other third parties to which Buyer may provide goods or services.

"**Compensable**" means that such Lead, Impression, or Link-Out (i) has been delivered by Seller to Buyer and accepted by Buyer as specified in this Agreement and (ii) if required by this Agreement with respect to a Lead, a Conversion Event has occurred with respect to such Lead. Compensable Leads for which subparagraph (ii) applies and has been fulfilled may also be referred to in this Agreement as a "**Converted Lead**".

"**Conversion Event**" means the conversion event or action specified in this Agreement has occurred or was undertaken by a consumer in response to advertising in a Channel in relation to a Lead, including, for example: (i) selecting an option on an electronic interface by pressing a button or touching a screen (a "**Click**"), (ii) scheduling an appointment with the Buyer or its sellers relating to an estimate or the delivery or performance of any its goods or services ("**Appointment**"), (iii) calling a specified number or receiving a call from Buyer, its Clients or any of their agents relating to any of their goods or services, which may require a minimum connected duration ("**Call**"), or (iv) completion and submission of a web form on a website or application ("**Web Form Fill**").

"**Cost**" means the fixed rate set forth in this Agreement to be paid in respect of a Compensable Lead, Impression, or Link-Out upon the occurrence of a (i) Conversion of a Lead, which may include the following, for example: cost per Click ("**CPC**"), cost per Appointment ("**CPA**"), cost per Call ("**CPC**"), cost per Lead delivered to, and accepted by, Buyer ("**CPL**"), or (ii) cost per individual Impression ("**CPI**") or Link-Out ("**CPLO**") delivered to, and accepted by, Buyer or cost per 1,000 Impressions or Link-Outs ("**Cost Per Mille**" or "**CPM**") delivered to, and accepted by, Buyer.

"**Digital Channels**" means to advertise, disseminate information, or communicate messages to consumers using media channels that with appropriate interaction from the consumer (such as Clicking on an advertisement) will connect the consumer to the web address or application agreed to by the Parties which may contain additional advertising or a Web Form Fill or other methods for a consumer to provide Personal Information to contact, or be contacted by, the seller of the goods or services advertised (a "**Designated Site/App**"): email ("**Email**"), web-based display ads, such as the Google Display Network ("**Display**"), online publications resembling editorial content but paid for by advertisers ("**Native**"), ads on search engine sites ("**Paid Search**"), social sites ("**Paid Social**"), non-paid links from public relations activities, social sites, and off-site engagement ("**Earned**"), non-paid links in organic search results ("**Organic Search**"), links in mobile-device messages ("**Push**"), web form fills originating from Seller's or its Transferor's websites ("**Host and Post**"), Call Transfers directly to Buyer's designated Client generated from SEM and website phone numbers ("**Digital Call Transfer**"), apps or internet based television or movie related video options (such as Hulu or Peacock) ("**Connected TV**"), dynamic promotional media displayed in public spaces ("**Digital Out of Home**" or "**DOOH**"), other online video platforms ("**Online Video**"), links in mobile device messages ("**Push/SMS**"), paid radio advertising ("**Radio**") over the air, or streaming audio platforms ("**Streaming Audio**").

"**Impression**" means Content in the Channel was viewed in a recorded and verifiable manner by a consumer.

"**Knowledge of Seller**", "**Seller's Knowledge**" or any similar phrase means, with respect to any fact or matter, the actual knowledge of

Seller's employees, together with such knowledge that such employees could be expected to discover after due investigation concerning the existence of the fact or matter in question.

"Lead" shall mean any indication or expression of a consumer's interest indicated by the submission of Personal Information that is generated or collected by Seller or any of its Transferors or collected at Buyer's designated site or app as a result of Seller's performance of this Agreement. A Lead does not include an Impression or Link-Out.

"Link" or **"Link-Out"** means a consumer has landed at Buyer's designated site or app via a link or link-out contained in the Content and Channel. The link or link-out can include any method agreed by the Parties for linking out to Buyer's designated site or app such as a hyperlink, click, phone call, spoken word, or printed or embedded in QR code. No Personal Information will be transferred to Buyer in connection with a Link.

"Offline Channels" means to advertise, disseminate information, or communicate messages to consumers using media channels which are static and not interactive and that only have the possibility of generating Leads via a call to the number listed in the medium by the consumer including, for example, the following: online and offline directories such as Yellowbook (**"Directories"**), printed physical marketing mailed or otherwise delivered or made available to potential consumers such as postcards, brochures, letters, etc. (**"Direct Mail"**), cooperative on-page packages inserted into newspapers nationwide (**"Co-Op FSI"**), using printed media to generate Call Transfers from the consumer (**"Print Call Transfer"**), DOOH, Radio with radio stations, media viewed on television (**"Television"**), four-page printed wrap vehicles that contain inserts and are delivered via USPS weekly or monthly (**"Shared Mail Wraps"**), printed inserts that are placed within boxes/packages delivered to consumers (**"Package Inserts"**), printed inserts that are placed within catalogs that are delivered to consumers via USPS (**"Catalog Blow-ins"**), and mailed envelopes that target households pre or post move to reach prospective customers during a period of change (**"New Mover Mailings"**).

"Personal Information" means any information that (a) identifies or relates to an individual who can be identified directly or indirectly from that data alone or in combination with other information in the Party's possession or control or that Party is likely to have access to, or (b) Applicable Law otherwise defines as protected personal information or similar.

"Process" or **"Processing"** means any operation performed on Personal Information or that Applicable Law include in the definition of processing, processes, or process, including the collection, creation, receipt, access, use, handling, recording, compilation, analysis, organizing, monitoring, maintenance, retention, storage, holding, transmission, transfer, protection, disclosure, amendment, distribution, erasure, destruction, or disposal of Personal Information.

"Qualified Consumer" shall mean an individual person that is the age of 18 or over and that (a) resides in the United States of America and is not otherwise subject to the data privacy laws of a jurisdiction other than the United States of America or any of its States or localities, (b) has expressly acknowledged their desire to be contacted by Buyer, its affiliates or their Clients regarding the products or services that are the subject of the advertising and marketing campaign, and (c) otherwise meets with any additional specifications set forth in this Agreement.

"Qualified" means that such Lead, Impression, or Link-Out (i) complies with this Agreement including any specifications set forth in any Purchase Order and (ii) with respect to each Lead, (A) the consumer associated with such Lead is a Qualified Consumer, (B) all Personal Information required to be delivered by Seller under this Agreement was delivered by Seller in respect of such Lead, (C) such Lead is not a duplicate of a Lead already in Buyer's or the Client's possession (as verified by Buyer or Client with reference to their database of leads) (a **"Duplicate Lead"**), and (D) such Lead was not originally submitted by the original submitter, Seller, or any of Seller's Transferees fraudulently or with fraudulent intent.

"TCPA Seller" means (i) with regard to any Leads to be contacted by Buyer's Clients prior to January 27, 2025, any of Buyer's Clients, and (ii) with regard to any Lead to be contacted by Buyer's Clients on or after

January 27, 2025, the "one identified seller" (within the meaning of the TCPA) identified by Buyer in writing to Seller.

"Telemarketing" means any inbound or outbound direct solicitation of consumers by Seller or any of Seller's Transferors or their respective agents or subcontractors for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services via telephone, wireless telephone, text, SMS, video, or facsimile including using an automated system, artificial or prerecorded voice, or artificial intelligence.

8. Other Definitional Provisions. The following shall apply to these Advertising Terms.

(a) The words "hereof," "herein," and "hereunder" and words of similar import when used in these Advertising Terms shall refer to these Terms as a whole and not to any particular provision of these Advertising Terms, and Section references are to these Advertising Terms unless otherwise specified.

(b) All other terms, agreements, schedules, and exhibits referred to herein are hereby incorporated in and made a part of these Advertising Terms as if set forth in full herein.

(c) The meanings given to terms defined herein shall be equally applicable to both singular and plural forms of such terms.

(d) Whenever the words "include," "includes," or "including" are used in these Advertising Terms they shall be deemed to be followed by the words "without limitation." Where the context permits, the use of the term "or" will be equivalent to the use of the term "and/or."

(e) Words denoting any gender shall include all genders. Where a word or phrase is defined herein, each of its other grammatical forms shall have a corresponding meaning.

(f) A reference to any Party shall include such Party's successors and permitted assigns.

(g) The word "extent" in the phrase "to the extent" means the degree to which a subject or other thing extends, and such phrase does not mean simply "if".

(h) References herein to any law shall be deemed to refer to such law as amended, modified, codified, reenacted, replaced, supplemented, or superseded in whole or in part and in effect from time to time, including any successor legislation thereto, and also to all rules and regulations promulgated thereunder.

(i) The division into Sections and other subdivisions and the insertion of headings are for convenience of reference only and shall not affect or be utilized in construing or interpreting these Advertising Terms.

(j) References to "days" means calendar days unless otherwise expressly specified. When calculating the period of time before which, within which, or following which any act is to be done or step taken pursuant to these Advertising Terms, the date that is the reference date in calculating such period will be excluded.

(k) References to "written" or "in writing" include in electronic form (including by e-mail transmission or electronic communication by portable document format (.pdf)).

(l) The word "will" will be construed to have the same meaning and effect as the word "shall". The words "shall," "will," or "agree(s)" are mandatory, and "may" is permissive.

9. Amendment and Modification. These Advertising Terms which can be found at www.convergemarketing.com/compliance/supplier and any other terms, conditions, agreements or other documents incorporated by reference in this Agreement which refer to a Buyer website are subject to change and are effective upon Buyer posting an updated version to such websites.

END OF TERMS



CONVERGE SUPPLIER EMAIL GUIDELINES

“Commercial Email” means any email the primary purpose of which is the commercial advertisement or promotion of a commercial product or service (including content on a website operated for a commercial purpose) and includes, for purposes of these Guidelines any Marketing Emails.

“Header Information” means the source, destination, and routing information attached to an email, including “From,” “To,” and “Reply to” lines, as well as the originating domain name and email address.

GUIDELINES FOR CLIENT MARKETING EMAILS - Emails that directly market or promote a Client or Client’s products or link to a Client specific website (whether operated by Client, Converge or a Marketing Partner)

- (1) The Header Information should accurately identify **EITHER** Converge or the Marketing Partner in the “From line. Alternatively, the “From line” can identify the Client. The “From line” **SHOULD NOT** say “[Client] Affiliate.”
- (2) The subject line should not include deceptive marketing messages, including claims that cannot substantiated, offer copy that is false or misleading, or copy that is unrelated to the message in the email. **EXAMPLE** - DO NOT advertise an offer, such as “30% discount,” “unbeatable deal,” “100% GUARANTEED,” when the email does not actually provide a way to get such deal or guaranteed results.
- (3) Clearly identify the email as an advertisement.
- (4) **DO NOT** say that the email was sent through an “affiliate,” since neither the Marketing Partner nor Converge is an affiliate of the Client (affiliate means and refers to common ownership of companies).
- (5) Include Converge’s “unsubscribe” link (or an email address) through which the recipient can opt out of receiving future Commercial Emails from the Client.
- (6) There should be **ONLY ONE** unsubscribe button or link, which should be associated with the Client’s opt-out list. The Marketing Partner **SHOULD NOT** include a separate unsubscribe link.
- (7) All Client Marketing Emails (whether such emails are sent by a Marketing Partner, Converge, or anyone else on behalf of the Client or by the Client directly) must be scrubbed against the most up-to-date opt-out list before they are transmitted.
- (8) Include a physical address **OF THE CLIENT** as the Sender. Converge can use its address instead of the Client’s, but the Client should be identified as the addressee (e.g., [Client] c/o Converge). The email can also use a P.O. Box registered to the Client. The Marketing Partner’s address should **NOT** be included in the email.

GUIDELINES FOR GENERAL MARKETING EMAILS - Emails that contain general commercial message for lead generation purposes without reference to any specific Client or Client product or service

- (1) The Header Information should accurately identify **EITHER** Converge or the Marketing Partner in the “From line”, since both are Initiators. The “From line” **SHOULD NOT** identify the Client.
- (2) The subject line should not include deceptive marketing messages, including claims that cannot substantiated, offer copy that is false or misleading, or copy that is unrelated to the message in the email.

- (3) Clearly identify the email as an advertisement.
- (4) **DO NOT** say that the email was sent through an “affiliate,” since the Marketing Partner is not an affiliate of Converge (affiliate means and refers to common ownership of companies).
- (5) Include Converge’s “unsubscribe” link (or an email address) through which the recipient can opt out of receiving future Commercial Emails from Converge.
- (6) There should be **ONLY ONE** unsubscribe button or link, which should be associated with Converge’s opt-out list (and not the Client’s opt-out list). The Marketing Partner **SHOULD NOT** include a separate unsubscribe link.
- (7) Include a physical address of Converge as the Sender. The Marketing Partner’s address **SHOULD NOT** be included in the email



SUPPLIER DATA PROCESSING AGREEMENT

This Supplier Data Processing Agreement (this “**DPA**”) provides supplemental terms and conditions relating to the purchase of Lead Generation Services by Converge Direct, LLC (“**Buyer**”) from Seller (together with Buyer, the “**Parties**” and each, a “**Party**”). Capitalized terms used in this DPA but not defined herein shall have the meaning set forth in the General Terms and Conditions for Suppliers a current copy which can be found here: www.convergemarketing.com/compliance/supplier (the “**General Terms**”). This DPA, any Purchase, any Definitive Agreement, the General Terms (including any other terms and conditions incorporated by reference herein) and the Advertising Terms (collectively, this “**Agreement**”) comprise the entire agreement between the Parties and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. This DPA prevails over any of the Seller’s general terms and conditions of purchase regardless of whether or when Seller has submitted its purchase order or such terms. Fulfillment of Seller’s order does not constitute acceptance of any of Seller’s terms and conditions and does not serve to modify or amend this DPA.

1. **Definitions and Interpretation.**

1.1 The following definitions and rules of interpretation apply in this DPA.

“**Business Purpose**” means the Lead Generation Services described in this Agreement.

“**Controller**” means Buyer.

“**Data Subject**” means an individual who is the subject of the Personal Information and to whom or about whom the Personal Information relates or identifies, directly or indirectly.

“**Personal Information**” means any information the Processor processes for the Controller that (a) identifies or relates to an individual who can be identified directly or indirectly from that data alone or in combination with other information in the Processor’s possession or control or that the Processor is likely to have access to, or (b) the relevant Privacy and Data Protection Requirements otherwise define as protected personal information.

“**Processing, processes, or process**” means any activity that involves the use of Personal Information or that the relevant Privacy and Data Protection Requirements may otherwise include in the definition of processing, processes, or process. It includes obtaining, recording, or holding the data, or carrying out any operation or set of operations on the data including, but not limited to, organizing, amending, retrieving, using, disclosing, erasing, or destroying it. Processing also includes transferring Personal Information to third parties.

“**Processor**” means Seller.

“**Privacy and Data Protection Requirements**” means all applicable federal, state, and local laws and regulations relating to the processing, protection, or privacy of the Personal Information, including where applicable, the guidance and codes of practice issued by regulatory bodies in any relevant jurisdiction.

“**Security Breach**” means any act or omission that compromises the security, confidentiality, or integrity of Personal Information or the physical, technical, administrative, or organizational safeguards put in place to protect it. The loss of or unauthorized access, disclosure, or acquisition of Personal Information is a Security Breach whether or not the incident rises to the level of a security breach under the Privacy and Data Protection Requirements.

1.2 **Incorporation by Reference.** This DPA is incorporated into and made a part of the General Terms and this Agreement. Interpretations and defined terms set forth in the General Terms and this Agreement apply to the interpretation of this DPA.

1.3 **Order of Precedence.** In the event of a conflict or inconsistency between the documents or provisions incorporated into or referenced below and this DPA, the documents or provisions shall prevail in the order listed below, with the first document or provision listed having the highest precedence:

(a) this DPA

- (b) a Definitive Agreement, if any
- (c) the Lead Generation Terms
- (d) the General Terms
- (e) the Purchase Order, if any

2. **Personal Information Types and Processing Purposes.**

2.1 The Controller retains control of the Personal Information and remains responsible for its compliance obligations under the applicable Privacy and Data Protection Requirements.

2.2 This Agreement describes the general Personal Information categories and related types of Data Subjects the Processor may process to fulfill the Business Purposes of this Agreement. The Controller discloses Personal Information to the Processor only for the limited and specified Business Purposes.

3. **Processor's Obligations.**

3.1 The Processor will only process, retain, use, or disclose the Personal Information to the extent, and in such a manner, as is necessary for the Business Purposes in accordance with the Controller's instructions. The Processor will not process, retain, use, or disclose the Personal Information for any other purpose, outside of the parties' business relationship, or in a way that does not comply with this DPA or the Privacy and Data Protection Requirements. This includes not combining or updating the Personal Information with personal information obtained outside of this contract unless the Privacy and Data Protection Requirements permit the action. The Processor must promptly notify the Controller if, in its opinion, the Controller's instruction would not comply with the Privacy and Data Protection Requirements.

3.2 The Processor must promptly comply with any Controller request or instruction requiring the Processor to amend, transfer, or delete the Personal Information, or to stop, mitigate, or remedy any unauthorized processing.

3.3 The Processor will maintain the confidentiality of all Personal Information and will not sell it to anyone, share it for cross-contextual (targeted) advertising with anyone, or disclose it to third parties without specific authorization from the Controller or this DPA, unless required by law. If a law requires the Processor to process or disclose Personal Information, the Processor must first inform the Controller of the legal requirement and give the Controller an opportunity to object or challenge the requirement, unless the law prohibits such notice.

3.4 The Processor will reasonably assist the Controller with meeting the Controller's compliance obligations under the Privacy and Data Protection Requirements, taking into account the nature of the Processor's processing and the information available to the Processor.

3.5 The Processor must promptly notify the Controller of any changes to Privacy and Data Protection Requirements, or its ability to meet those obligations, that may adversely affect the Processor's performance of this Agreement or this DPA.

4. **Processor's Employees.**

4.1 The Processor will limit Personal Information access to:

(a) those employees who require Personal Information access to meet the Processor's obligations under this DPA and this Agreement; and

(b) the part or parts of the Personal Information that those employees strictly require for the performance of their duties.

4.2 The Processor will ensure that all employees:

(a) are informed of the Personal Information's confidential nature and use restrictions and are obliged to keep the Personal Information confidential;

(b) have undertaken training on the Privacy and Data Protection Requirements relating to handling Personal Information and how it applies to their particular duties; and

(c) are aware both of the Processor's duties and their personal duties and obligations under the Privacy and Data Protection Requirements and this DPA.

5. Security.

5.1 The Processor must at all times implement appropriate technical and organizational measures designed to safeguard Personal Information against unauthorized or unlawful processing, access, copying, modification, storage, reproduction, display, or distribution, and against accidental loss, destruction, unavailability, or damage including, but not limited to, the security measures set forth in this Agreement.

5.2 The Processor will immediately notify the Controller if it becomes aware of any advance in technology and methods of working, which indicate that the Parties should adjust their security measures.

5.3 The Processor must take reasonable precautions to preserve the integrity of any Personal Information it processes and to prevent any corruption or loss of the Personal Information, including but not limited to establishing effective back-up and data restoration procedures.

6. Security Breaches and Personal Information Loss.

6.1 The Processor will promptly notify the Controller if any Personal Information is lost or destroyed or becomes damaged, corrupted, or unusable.

6.2 The Processor will immediately notify the other Party if it becomes aware of:

- (a) any unauthorized or unlawful processing of the Personal Information; or
- (b) any Security Breach.

6.3 Immediately following any unauthorized or unlawful Personal Information processing or Security Breach, the Parties will co-ordinate with each other to investigate the matter. The Processor will reasonably co-operate with the Controller in the Controller's handling of the matter, including:

- (a) assisting with any investigation;
- (b) providing the Controller with physical access to any facilities and operations affected;
- (c) facilitating interviews with the Processor's employees, former employees, and others involved in the matter; and
- (d) making available all relevant records, logs, files, data reporting, and other materials required to comply with all Privacy and Data Protection Requirements or as otherwise reasonably required by the Controller.

6.4 The Processor will not inform any third party of a Security Breach without first obtaining the Controller's prior written consent, except when law or regulation requires it.

6.5 The Processor agrees that the Controller has the sole right to determine:

- (a) whether to provide notice of the Security Breach to any Data Subjects, regulators, law enforcement agencies, or others, as required by law or regulation or in the Controller's discretion, including the contents and delivery method of the notice; and
- (b) whether to offer any type of remedy to affected Data Subjects, including the nature and extent of such remedy.

6.6 The Processor will cover all reasonable expenses associated with the performance of the obligations under **Section 6.2** and **Section 6.3**, unless the matter arose from the Controller's specific instructions, negligence, willful default, or breach of this DPA, in which case the Controller will cover all reasonable expenses.

6.7 The Processor will also reimburse the Controller for actual reasonable expenses the Controller incurs when responding to and mitigating damages, to the extent that the Processor caused a Security Breach, including all costs of notice and any remedy as set out in **Section 6.5**.

7. **Cross-Border Transfers of Personal Information.** Processor may only receive, access, transfer, or store Personal Information within the United States of America, without the Controller's prior written consent.

8. **Subcontractors.** The Processor may not authorize any third party or subcontractor to process the Personal Information.

9. **Data Subject Requests, Complaints, and Third Party Rights.**

9.1 The Processor must notify the Controller (and each Controller must notify the other Controller) within promptly if it receives a request from a Data Subject to exercise any rights the individual may have regarding their Personal Information, such as access, correction, deletion, or to opt-out of or limit certain activities like sales, disclosures, or other processing actions.

9.2 The Processor must notify the Controller (and each Controller must notify the other Controller) immediately if it receives any other complaint, notice, or communication that directly or indirectly relates to the Personal Information processing or to either party's compliance with the Privacy and Data Protection Requirements.

9.3 The Processor will give the Controller (and each Controller will give the other Controller) its full cooperation and assistance in responding to any complaint, notice, communication, or Data Subject request.

9.4 The Processor must not disclose the Personal Information to any Data Subject or to a third party unless the disclosure is either at the Controller's request or instruction, permitted by this DPA, or is otherwise required by law.

10. **Term and Termination.**

10.1 This DPA will remain in full force and effect so long as:

(a) this Agreement remains in effect; or

(b) the Processor retains any Personal Information related to this Agreement in its possession or control (the "**Term**").

10.2 Any provision of this DPA that expressly or by implication should come into or continue in force on or after termination of this Agreement in order to protect Personal Information will remain in full force and effect.

10.3 The Processor's failure to comply with the terms of this DPA is a material breach of this Agreement. In such event, the Controller may terminate any part of this Agreement authorizing the processing of Personal Information effective immediately upon written notice to the Processor without further liability or obligation.

10.4 If a change in any Privacy and Data Protection Requirement or either Party's circumstances prevents a Party from fulfilling all or part of its obligations under this Agreement, the Parties will suspend the processing of Personal Information until the Party's processing complies with the requirements. If the Parties are unable to bring the Personal Information processing into compliance with the Privacy and Data Protection Requirements within a reasonable time, they may terminate this Agreement upon written notice to the other Party.

11. **Data Return and Destruction.**

11.1 At the Controller's request, the Processor will give the Controller a copy of or access to all or part of the Controller's Personal Information in its possession or control in the format and on the media reasonably specified by the Controller.

11.2 On termination of this Agreement for any reason or expiration of its term, the Processor will securely destroy or, if directed in writing by the Controller, return and not retain, all or any Personal Information related to this Agreement in its possession or control.

11.3 If any law, regulation, or government or regulatory body requires the Processor to retain any documents or materials that the Processor would otherwise be required to return or destroy, it will notify the Controller in writing of that

retention requirement, giving details of the documents or materials that it must retain, the legal basis for retention, and establishing a specific timeline for destruction once the retention requirement ends. The Processor may only use this retained Personal Information for the required retention reason or audit purposes.

11.4 The Processor will certify in writing that it has destroyed the Personal Information promptly after it completes the destruction.

12. **Records.**

12.1 The Processor will keep detailed, accurate, and up-to-date records regarding any processing of Personal Information it carries out for the Controller, including but not limited to, the access, control, and security of the Personal Information, approved subcontractors and affiliates, the processing purposes, and any other records required by the applicable Privacy and Data Protection Requirements (the "**Records**").

12.2 The Processor will ensure that the Records are sufficient to enable the Controller to verify the Processor's compliance with its obligations under this DPA.

13. **Audit.**

13.1 The Processor will permit the Controller and its third-party representatives to audit the Processor's compliance with its DPA obligations, upon at least fifteen (15) days' notice, during the Term and for five (5) years after this DPA terminates. The Processor will give the Controller and its third-party representatives all necessary assistance to conduct such audits. The assistance may include, but is not limited to:

(a) physical access to, remote electronic access to, and copies of the Records and any other information held at the Processor's premises or on systems storing Personal Information;

(b) access to and meetings with any of the Processor's personnel reasonably necessary to provide all explanations and perform the audit effectively; and

(c) inspection of all Records and the infrastructure, electronic data, or systems, facilities, equipment, or application software used to store, process, or transport Personal Information.

13.2 The notice requirements in this **Section 13** will not apply if the Controller reasonably believes that a Security Breach occurred or is occurring, or the Processor is in breach of any of its obligations under this DPA or any Privacy and Data Protection Requirements.

13.3 If a Security Breach occurs or is occurring, or the Processor becomes aware of a breach of any of its obligations under this DPA or any Privacy and Data Protection Requirements, the Processor will:

(a) promptly conduct its own audit to determine the cause;

(b) produce a written report that includes detailed plans to remedy any deficiencies identified by the audit;

(c) provide the Controller with a copy of the written audit report; and

(d) remedy any deficiencies identified by the audit within fourteen (14) days.

14. **Warranties.**

14.1 The Processor warrants and represents that:

(a) its employees, subcontractors, agents, and any other person or persons accessing Personal Information on its behalf are reliable and trustworthy and have received the required training on the Privacy and Data Protection Requirements relating to the Personal Information; and

(b) it and anyone operating on its behalf will process the Personal Information in compliance with both the terms of this DPA and all applicable Privacy and Data Protection Requirements and other laws, enactments, regulations, orders, standards, and other similar instruments; and

(c) it has no reason to believe that any Privacy and Data Protection Requirements prevent it from providing any of this Agreement's contracted services; and

(d) considering the current technology environment and implementation costs, it will take appropriate technical and organizational measures to prevent the unauthorized or unlawful processing of Personal Information and the accidental loss or destruction of, or damage to, Personal Information, and ensure a level of security appropriate to:

(i) the harm that might result from such unauthorized or unlawful processing or accidental loss, destruction, or damage; and

(ii) the nature of the Personal Information protected; and

(iii) comply with all applicable Privacy and Data Protection Requirement and its information and security policies, including the security measures required in **Section 5.1**.

14.2 The Controller warrants and represents that the Processor's expected use of the Personal Information for the Business Purpose and as specifically instructed by the Controller will comply with all Privacy and Data Protection Requirements.

15. **Indemnification.**

15.1 The Processor agrees to indemnify, keep indemnified, and defend at its own expense the Controller against all costs, claims, damages, or expenses incurred by the Controller or for which the Controller may become liable due to any failure by the Processor or its employees, subcontractors, or agents to comply with any of its obligations under this DPA or applicable Privacy and Data Protection Requirements.

15.2 Any limitation of liability set forth in other provisions of this Agreement will not apply to this DPA's indemnity or reimbursement obligations.

15.3 During the Term, the Processor must, at its own cost and expense, obtain and maintain insurance, in full force and effect, sufficient to cover the Processor's potential indemnity or reimbursement obligations. The Processor will produce the policy and premium payment receipt to the Controller on request. The Processor will give the Controller thirty (30) days advance written notice if the policy materially changes or is cancelled.

16. **Notice.** Any notice or other communication given to a party under or in connection with this DPA must be in writing and delivered as set forth in this Agreement. The foregoing sentence does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

END OF DPA TERMS##